

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

XYZ Distributors, Inc.

Complainant,

Case 02-05-019

vs.

Pacific Centrex Services,

Defendant.

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING PREHEARING CONFERENCE MEMORANDUM AND ORDER**

Administrative Law Judge (ALJ) Victor Ryerson, the assigned ALJ in this proceeding, held a prehearing conference (PHC) on August 5, 2002, at 10:00 a.m. in the Commission Courtroom, State Office Building, 320 West 4th Street, Suite 500, Los Angeles, CA. Commissioner Geoffrey Brown, the assigned Commissioner, was necessarily absent. For budgetary reasons, no reporter was present, and therefore no transcript of the PHC is available.

This Memorandum and Order shall be the only official record of the events that transpired and discussion that took place at the PHC.

Appearances

The following appearances were entered at the PHC:

1. Behnam (David) Partiyeli
XYZ Distributors, Inc.
830 S. Hill St. #M 103
Los Angeles, CA 90014
(213) 689-8800 ext. 12

(213) 689-1023 (FAX)

David@XYZDistributors.com

Appearing with Eileen Uy for Complainant XYZ Distributors, Inc.

2. Joshua Ploude

Pacific Centrex Services, Inc.

6855 Tujunga Ave.

N. Hollywood, CA 91605

(818) 623-2300 ext. 1128

(818) 623-2301 (FAX)

joshp@pcs1.net

Appearing with Della Gardrun for Defendant Pacific
Centrex Services, Inc.

Categorization

The ALJ advised the parties that this is a complaint proceeding, and has therefore been categorized as adjudicatory. There has been no appeal of the categorization. Accordingly, the Commission must issue its order no later than the anniversary of the date the complaint was filed, May 1, 2003.

Nature of the Case

XYZ Distributors, Inc. (XYZ) brought this complaint to recover alleged overcharges it paid to Pacific Centrex Services (PCS) for intrastate InterLATA telephone calls. XYZ claims that the charges for these calls exceeded the prices it was obligated to pay under a contract it had with PCS.

Background

The parties furnished the following basic background facts for purposes of defining the issues.

Until June 1999, a company called Cybernet Communications (Cybernet) provided telecommunications services to XYZ. Cybernet installed a device called an auto-dialer on XYZ's premises, the purpose of which was to route calls away from XYZ's presubscription carrier. XYZ subsequently entered into a contract with PCS to receive IntraLATA and InterLATA toll services at rates

specified in the contract. The applicable tariff is Cal. Sched. P.U.C. 1-T. When the service was changed over to PCS, Cybernet disconnected the lines to the auto-dialer, but left the device on XYZ's premises. PCS stated that it would require a telecommunications technician to reconnect the lines to the auto-dialer.

For a 9-month period, between October 1999 and September 2000, PCS, as billing agent, billed XYZ for InterLATA calls that were routed over the AT&T network and billed at casual rates, which were significantly higher than PCS' contract rates. PCS paid AT&T for these calls, and XYZ paid PCS for the corresponding charges for a number of months until XYZ noticed the discrepancy and claimed that it was entitled to a partial refund because the charges exceeded the contract rates.

PCS contends that either the auto-dialer was reconnected, or that XYZ's employees were using "dial-around" access codes (e.g., 10-10 numbers), either of which would result in the higher charges. XYZ rejects both of these theories. XYZ contends that it was informed PCS experienced network problems during the period in question, and that this fact accounts for the overcharges. PCS denies this explanation.

The total sum in dispute is approximately \$1,600, reduced by the amount XYZ would have paid at the rates specified by the contract.

Issues

- (1) What caused the calls in question to be billed at AT&T casual rates rather than the rates specified in the contract?
- (2) Under the circumstances of this case, did PCS violate the applicable tariff by billing these calls at rates other than those specified in the contract?
- (3) If PCS violated the tariff by billing these calls at rates other than those specified in the contract, what is the total amount of overcharges reimbursable to XYZ?

Other Matters

The ALJ advised the parties that the Commission has an expedited complaint procedure (ECP) under Public Utilities Code Section 1702.1 and Rule 13.2 of the Rules of Practice and Procedure for complaint cases in which the amount of the claim is under \$5000, and encouraged the parties to consider utilizing that procedure in this case.

Procedural Schedule

The ALJ established the following procedural requirements and deadline:

1. The parties may suggest corrections to this Memorandum and Order in writing by sending a letter to the ALJ and serving a copy thereof on the other party within 10 days hereof.
2. The parties shall meet and confer by no later than August 16, and to the extent possible shall mutually disclose information and exchange documents pertaining to the issues in this proceeding.
3. Any formal discovery request to the opposing party for information or documents not produced in accordance with the preceding paragraph shall be made by no later than September 15, 2002.
4. The parties shall file a joint case management statement in accordance with Rule 49 (c) by no later than September 15, 2002. The joint case management statement shall include an indication of whether the parties are willing to resolve this case in accordance with the ECP procedures outlined in Rule 13.2.

IT IS SO RULED.

Dated August 9, 2002, at San Francisco, California.

/s/ VICTOR RYERSON

Victor Ryerson

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge Ruling Regarding Prehearing Conference Memorandum and Order on all parties of record in this proceeding or their attorneys of record.

Dated August 9 2002, at San Francisco, California.

/s/ ERLINDA PULMANO
Erlinda Pulmano

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

